

A Guide to the Right to Manage

Warren House

By the Warren House Resident's Association

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Introduction

In recent years it has become evident that the standard of management at Warren House has declined in a number of ways. At the same time, the costs have significantly increased. Not only the cost of major works that have just been completed, and the further works that are planned, but also the steep increase in our service charge and reserve fund contributions.

On top of this, lessees are now having to pay the additional VAT on porters’ wages, significant increase in cleaning costs, much higher insurance premiums and a capex plan that the WHRA believes is not in the best interests of the building. The WHRA has tirelessly tried to work with Premier Estates for justification on

their numbers yet when specific questions are asked we are sent a deluge of information, yet the simple

questions remain unanswered.

A very compelling advantage of RTM is that a special VAT rule allows RTM companies to be exempt from VAT on porters’ wages provided that they meet certain conditions which Warren House (WH) can do. The recent charging of VAT on Porters’ wages has been of additional concern to many leaseholders in WH. Exemption from these charges would greatly reduce the level of future service charge expenditure.

The Warren House Residents Association (WHRA) has therefore agreed to explore the option of RTM with leaseholders in WH. As an initial step, so that leaseholders are well informed, the WHRA has produced

this booklet which explains what constitutes RTM and the processes by which RTM can be secured should leaseholders decide they wish to pursue this course of action.

Current Management Structure

In simple terms, WH leaseholders currently have what is known as tri-partite leases; in other words, there are three parties to the lease:

 The Freeholder (XXX)

 XXXX

 The Leaseholder

Freehold Managers PLC is responsible for the management of WH and has the power to make all decisions about the management of the building. For example, they choose the managing agents, appoint surveyors, consultants and contractors for maintenance and major works and also make many decisions involving the day-to-day running of the block.

All these services are necessary but currently leaseholders have very little or no say on appointments and decisions made by the Freehold Managers PLC

Right to Manage Overview

Under the Commonhold and Leasehold Reform Act of 2002, leaseholders of flats have the legal right to acquire the management of their property. It entitles leaseholders (via a RTM Company) to manage their building in-house or to appoint a professional management company of their choice to manage it on their behalf.

To exercise the right to RTM, **you don’t have to prove fault or incompetence of your landlord or managing agent.** In other words, lessees are legally entitled to acquire the RTM, regardless of the performance of the landlord or managing agent.

The legislation’s purpose is to put control in the hands of leaseholders who collectively have the greatest financial interest in the property. One of the intentions of this legislation was to **improve the standard of leasehold management** and **prevent leaseholders from being exploited by unscrupulous landlords and their managing agents.**

Not all dwellings qualify for the right to acquire RTM but **WH does meet the necessary criteria so lessees can acquire the RTM.** For completeness, the qualification criteria are mentioned further on in this document.

If WH leaseholders were to acquire the RTM, a new RTM company would be formed which would effectively replace the Freehold Managers PLC in the tri-partite lease as follows:

 The Freeholder (xxx)

 The RTM Company

 The Leaseholder

Before explaining RTM in more depth we think this quote from the *Leasehold Knowledge Partnership* (the

Leaseholders’ Charity) sums up the situation rather well for blocks of flats that are not RTM managed:

*“It is an absurdity that a block of flats, where the value might be accounted 99% to the leases, has a freeholder who makes all the decisions on management even though his stake in the building is worth 1%. More typically freeholds are worth 3% of a site, but it is still piffling compared with the powers – including forfeiture – that the freehold owning landlord has.”*

Questions and Answers

The following questions and answers address or explain RTM acquisition process in a simple manner that is easily understandable. It is important to stress that whilst the list of questions is fairly comprehensive it is not exhaustive.

Overview

1. What is the Right to Manage?

Right to Manage (RTM) is the legal right of leaseholders of flats to acquire the management of their property and either manage it themselves or appoint a professional management company of their own choosing.

2. What is the purpose of Right to Manage?

The purpose is to put control in the hands of leaseholders who collectively hold the greatest financial interest in the property, and therefore want a cost effective and high standard of management.

3. How does Right to Manage work?

RTM is only exercisable through an RTM company set up according to statutory regulations. The first step is the incorporation of the RTM company with at least 50% or more leaseholders as founding members and at least one person as a director (but in practice there are typically a lot more).

Once the RTM company is established, the required legal notices are served, including a notice on the Freeholder and Maintenance Trustee notifying them that leaseholders will be exercising their statutory RTM.

4. Can the Freeholder or the Maintenance Trustee prevent the process?

As long as the RTM criteria are met2, the Freeholder and/or Maintenance Trustee cannot legally prevent the process, and the RTM is determined a month later (**The Determination Date**). The RTM company will take over the management 3 months later (**The Acquisition Date**).

The Freeholder and/or Maintenance Trustee may object and serve a Counter Notice. These can only be on technicalities and are typically used as delaying tactics. If the Counter Notice is not withdrawn, an application to the First-Tier Tribunal (Property Chamber) will need to be made for determination of the issue.

5. How Long does it take to acquire Right to Manage?

The whole process usually takes five to six months from start to finish.

Process

6. Is a majority of leaseholders necessary to go ahead?

As long as at least half the leaseholders are in support, the RTM process can proceed. It is not required to have a majority.

7. How many directors are required?

By statute, the RTM company is only required to have one director but will typically have more. There is no requirement for directors to be leaseholders. The Freeholder has no automatic legal right to be a director but could be in the unlikely event it was requested. Quite often Freeholders are members of the RTM company (with a vote) as they have the legal right to membership.

2 See *More Information* post-.

8. What are the responsibilities and liabilities of RTM company directors?

All directors have a responsibility to serve the best interests of the RTM company. As the main object of the RTM company is the management of the building, directors’ responsibilities are to act in the best interest of all leaseholders and not just the RTM company members.

RTM companies that appoint a managing agent are not involved in the day-to-day management of the building as this is delegated to the appointed management company. If the appointed management company meets all its obligations, the RTM company directors should have very little work themselves. The directors are responsible for keeping a register of members, directors, and secretaries, for making annual returns, and preparing annual accounts. Usually, this work is put out to a professional service provider, or often the managing agent company can provide this in-house.

9. Do RTM Company directors need to be insured?

Yes. RTM company directors are legally liable for their statutory obligations to the company, and it is important for the board of directors to be insured. This typically costs about £200-£300 per year for all directors.

10. Will I be asked to pay any costs to acquire the RTM?

Each participating leaseholder will be required to pay their contribution to the fees and expenses of acquiring the RTM. Depending on the approach taken the anticipated cost to each lessee is expected to be in the region of £100-£500.

11. What about the Freeholder’s and Maintenance Trustee costs?

The Freeholder and XXX may seek to charge its costs incurred in consequence of the RTM claim notice. By law, these costs must be reasonable and in the event of a dispute shall be determined by the First-Tier Tribunal. These expenses are typically between £500 and £2,000 in total for all leaseholders, depending on the size of the property, and will usually become payable after the Acquisition Date.

12. Who owns the Freehold after RTM?

Acquiring the RTM does not change the ownership of the freehold. As provided for in each lease, the freeholder will continue to collect the ground rent. After the Acquisition Date of RTM the freeholder has the right to become a member of the RTM company, with a single vote that reflects an interest in the building. The freeholder retains some powers such as the right to forfeiture but will have no involvement in the day-to-day running of the property. The management of the building will be in the hands of the RTM company which will be working for the leaseholders, not the freeholder.

13. What happens to contracts with service providers?

All contracts with service providers for gardening, cleaning and maintenance etc. will cease on the Acquisition Date. In legal terms there is no automatic novation of these contracts, but if desirable they can be renegotiated.

15. Will our leases require revision if leaseholders gain the legal Right to Manage?

No. xxxx has confirmed verbally that only a letter to accompany our lease will be required3.

Administration

16. Does RTM overcome the issue with VAT on porters’ wages?

Absolutely! HMRC recognise RTM companies as being different from other residential management companies (RMCs). There is a special HMRC VAT rule that allows RTM companies to be exempt from VAT on porters’ wages provided they meet certain conditions (which Warren House can meet). The WHRA has been informed that RMCs (where they consider it appropriate) are converting to RTM companies to take advantage of this VAT exemption rule.

17. Can new management solve our problems?

Nothing can be 100% certain. If there is a history of neglect by the previous management, it may take time to turn things around. However, the selection process of new management company will include areas for improvement and targets to be met. The bottom line is that if they can’t perform, they can be replaced. This is a powerful incentive for them to improve standards, control costs and keep all the promises they make to you.

18. Can we expect to save money?

Probably, YES. Many leaseholders are facing excessively high charges for items such as insurance, security and maintenance contracts purchased at uncompetitive prices. There is little incentive for managing agents to get competitive quotes if they know they can just pass the cost on to the leaseholders. In some

instances, freeholders and property managers are under common ownership and control, so management choices and decisions may not always be in the leaseholders’ best interests. By self-managing or appointing a managing agent on specific terms, it is possible to ensure that management gives best value benefit to leaseholders - not the landlord. There will also be clarity, transparency and regular scrutiny of annual accounts.

This can result in thousands of pounds of savings annually or, if leaseholders prefer, provide improvements in services at no extra cost, or a combination of the two. At the end of the day, the leaseholders decide.

19. What happens to leaseholder funds?

All leaseholders’ funds (service charge and reserves) which are held in trust by the existing managing agent or freeholder must be handed over to the new management entity on the Acquisition Date. In practice, the outgoing manager may withhold a small percentage of funds until the current year’s accounts are audited up to the Acquisition Date. Otherwise, all funds must be transferred to client accounts operated by the new

manager. The new management entity will organise the transfer of the service charge payments and advise of any changes to the standing orders or direct debits.

20. Do we need to do RTM to change managing agents?

The simple answer is yes. Under the current situation at Warren House (outlined above) leaseholders have no power to insist that the managing agent is changed.

21. What is expected/required of leaseholders with RTM?

Leaseholders can either participate in the RTM process or not. However, non-participating leaseholders will not have a vote in the RTM management company.

3 Currently subject to pending written confirmation from Cadogan.

22. Will existing employees (the porters and cleaners) change with the RTM?

It is unlikely that the porters will change. The Transfer of Undertakings and Employment Regulations (TUPE) will usually apply through RTM; however, the transfer of employees is not guaranteed in every case. It is anticipated that the porters will want to continue working at Warren House but if they decide to leave it will be their choice alone.

23. If the lessees acquire the RTM, how can it be ensured that new managing agents will be an improvement on the existing managing agents?

There are a number of ways that this can be achieved. Firstly, the important thing to recognise is that the RTM company will be a managing agent’s employer. So, the relationship changes significantly. The RTM company on behalf of the leaseholders will be able to choose a suitable managing agent that they have thoroughly vetted beforehand.

24. Does exercising the Right to Manage automatically provide a lease extension as well and will RTM affect lease extensions?

No, the two are completely separate. Forming a RTM company to manage the property does not give members or non-members of the new RTM company an automatic leasehold extension on their current leases. This is because the RTM process does not transfer interest in the property.

In addition, RTM has absolutely no effect on leaseholders statutory legal right to extend their leases.

25. What happens to our relationship with RMG during the process and after?

Premier Estates are employed by Freehold Managers Plc as Warren House property managers (commonly known as managing agents). The indirect relationship between the leaseholders and Premier Estates will terminate on the Acquisition Date.

26. Will changing our managing agent (RMG) cause any disruption?

The RTM Acquisition Date effectively provides a clean legal break between the leaseholders and the Premier Estates and Freeholder in terms of property management. This might be cause for concern as this is a fairly substantial change.

However, it should be noted that there is effectively a **minimum three month** “handover period” from the old managing agents (Premier Estates) to the new managing agents. In other words, the time between the RTM Determination Date and Acquisition Date. Furthermore, the statutory law requires the Freeholder and in turn its agents (e.g Premier Estates) to handover all relevant management information to the new RTM company and its managing agents.

Therefore, given the relatively long handover period combined with the attendant legal requirements of the outgoing property managers, it is not anticipated that any major disruption or problems will arise.

27. Will RTM company members or non-members have any liabilities or responsibilities?

No. Nothing will change when the leaseholders acquire the Right to Manage, and accordingly, they will not take on any liabilities or responsibilities when this process is completed.

Miscellaneous

28. Are there any disadvantages to RTM?

RTM requires careful thought and planning. However, by using RTM specialists who handle the administrative side of acquiring the RTM for leaseholders, risks can be mitigated, and the benefits of RTM outweigh any potential risks.

When comparing a poor and wasteful managing agent with the benefits of leaseholder-driven

management, it is difficult to find any disadvantages with RTM, as it is a compelling proposition, not just for

Warren House but for any other similarly managed block of flats.

29. Has RTM proven successful?

The Competition and Markets Authority (formerly the Office of Fair Trading) recently published an in-depth market study of leasehold and their report states:

*“We support the principle of RTM and recognise the greater levels of leaseholder satisfaction where leaseholders have exercised their RTM”.*

Accordingly, thousands of leaseholders throughout England & Wales now enjoy better services and value for money, either through self-management or through the employment of professional management of their own choosing.

30. Is RTM an end in itself, or a route to further change?

RTM is an end in itself. The aim of RTM is for the leaseholders to gain the legal right to manage their building under the statutory law. However, it can also be seen as a steppingstone into Enfranchisement (essentially the legal process of leaseholders acquiring the freehold of their property) as essentially part of Enfranchisement is managing the building once the freehold is acquired.

31. Will RTM affect the value of my flat and make it easier/harder to sell?

RTM may increase the value of your flat marginally and will most likely make it easier to sell it, as a RTM

property is seen as more desirable than traditional freeholder management.

32. What is going to happen if I don’t want to participate in the RTM application?

No one can be forced to take part. From the leaseholder’s point of view not much changes. The only exception being that after the RTM acquisition, those participating in the RTM management company will be responsible for maintaining the block.

33. If I don’t participate in the RTM application now can I join later?

As stated in the aforementioned not everyone has to take part in the initial RTM application. If at a later date you wish to become a member of the RTM company that will still be possible. It is likely there will be a fee to be paid which is anticipated to be the same as the founding members fee to be fair.

It’s worth noting that if a lessee is a non-participant in the RTM company, they will not have any voting rights in how the building is run.

34. Should I buy my Freehold or exercise my Right to Manage?

This blog does a good job of answering this question:

[https://www.kemptoncarr.co.uk/news-and-knowledge/should-i-buy-my-freehold-or-exercise-my-right-to-](https://www.kemptoncarr.co.uk/news-and-knowledge/should-i-buy-my-freehold-or-exercise-my-right-to-manage/) [manage/](https://www.kemptoncarr.co.uk/news-and-knowledge/should-i-buy-my-freehold-or-exercise-my-right-to-manage/)

Paper copies are available upon request.

35. Will there still be Warren House Residents Association?

The new RTM company will effectively be the residents association. The directors can be viewed as committee members and the constitution can be viewed as the company’s Articles of Association. In practical terms, it is envisaged that it will operate in much the same way as it does today with essentially no real change.

Next Steps

We hope that the above guide on RTM has provided you with a good understanding and what’s involved should it be adopted. If you have any further questions, or require clarification on any of the above, please get in touch with our Chair, Shally Nahar, either by email or telephone:

snahar@btconnect.com

+44 7803 294450

***The WHRA committee believes that it would be a good idea to first increase the membership of the WHRA as a stepping stone to the RTM process. Please complete and return the membership form if you already aren't a member ticking the boxes for RTM.***

Although we believe that this guide is fairly comprehensive, we were mindful of not overwhelming the reader with legal and technical jargon concerning the subject matter, and therefore we have tried to keep things as simple as possible. However, for those wishing to know a bit more we have put together a further section below that descends into a bit more detail.

More Information

The following section provides a bit more explanation on the legal and technical elements of RTM.

Qualification

These criteria must be met:

 The right to acquire RTM applies to leaseholders of a building or part of a building containing at least 2 flats.

 At least two-thirds of the flats in the building must be owned by long leaseholders (leases of more than 21 years when first granted).

 At least half of the leases in the building held by long leaseholders (leases of more than 21 years when first granted) must take part in acquiring the RTM.

 The premises will not qualify for RTM if the non-residential areas, e.g. shops, make up more than

25% of the whole floor area of the building.

 The property may not qualify if there are four or fewer flats and there is a resident landlord.

 The premises must be a structurally detached building or self-contained part of a building.

 The RTM company must have as a minimum half of the qualifying tenants as members.

 A local housing authority must not be the landlord of any qualifying tenant.

Procedure

The below is an outline of the procedure required to acquire RTM:

1. The participating leaseholders must set up an RTM company using prescribed Articles of

Association.

2. A notice inviting participation must be served on all leaseholders who are not members, or who have not agreed to become members of the RTM company.

3. A Notice of claim for RTM must be the served on the freeholder not earlier than two weeks after the above participation notice has been served.

4. The Freeholder can challenge RTM by counter-notice within one month of receipt.

If they do, and the counter-notice is not withdrawn, the RTM company can apply to the First-Tier

Tribunal (Property Chamber) for a ruling as to whether they have the Right to Manage.

5. If the Freeholder does not challenge the notice, the RTM company acquires the Right to Manage four months from the date of the notice of claim (“**the Acquisition Date**”).

6. The Freeholder should notify the RTM company of existing contractors and also notify those contractors of the takeover by the RTM company.

Management

An overview of RTM company management is presented underneath:

 The RTM company does not have to keep on the Freeholder and/or Maintenance Trustee`s existing contractors, e.g. managing agents. It can employ its own agents or manage the building in-house.

 The RTM company takes on all management functions under the lease, although the Freeholder has to be kept informed on matters such as consents, alterations, or lettings.

 The RTM company has the power to enforce obligations under the lease, but not to use the forfeiture procedure which is reserved by the Freeholder.

 The Freeholder is entitled to apply to be a member of the RTM company after the acquisition date.

 The RTM company must abide by the Articles of Association and company law. Important roles of the company must be filled, for example, company directors and secretary.

Further Reading

If you have got this far and yet crave even more information we applaud you! The following resources may be of interest:

<https://www.lease-advice.org/advice-guide/right-manage/>

<https://www.leaseholdknowledge.com/advice/full-right-to-manage-guide-and-forms/>

Paper copies are available on request.